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Supreme Court, U.S.
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In The
Supreme Court of the United States

GARRISON S. JOHNSON,

Petitioner,

v.

STATE OF CALIFORNIA, *et al.*,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF FORMER STATE CORRECTIONS OFFICIALS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

Amici curiae are former senior state corrections officials who have extensive experience in prison management matters. *Amici* believe that the California Department of Corrections' ("CDC") policy at issue in this case, which segregates prisoners by race in assignment to double cells in reception centers at CDC facilities, is premised on archaic assumptions about the relationship between racial integration of cells and interracial violence in prison – assumptions that are at odds with the latest empirical evidence on the subject and the current professional judgment of corrections officials nationwide. The *amici* are as follows:

Walter J. Dickey served as Administrator of the Wisconsin Division of Corrections from 1983 through 1987, and as Chair of Wisconsin Governor Tommy Thompson's Task Force on Corrections in 1996-97. In addition, Mr. Dickey was a member of the United States Department of Justice Executive Sessions on Sentencing and Corrections from 1997 through 2001. A widely published author on corrections issues, Mr. Dickey presently is the Evjue-Bascom Professor of Law at the University of Wisconsin-Madison Law School, where he has taught since 1976.

David C. Evans served as Commissioner of Corrections in Georgia from 1976 to 1990, and as Chairman of the Georgia Juvenile Justice Board from 1999 to 2001. In

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[1] The parties have consented to the filing of this brief. Their consent letters are on file with the Clerk of the Court. Pursuant to Supreme Court Rule 37.6, counsel for *amici curiae* certifies that this brief was not written in whole or in part by counsel for any party, and that no person or entity other than counsel for *amici* has made a monetary contribution to the preparation and submission of the brief.

addition, Mr. Evans was President of the Association of State Correctional Administrators from 1986 to 1990. Mr. Evans has taught corrections at the graduate school level, and, at present, is a private consultant on corrections matters.

Larry Fields has 32 years of experience in the corrections field. Mr. Fields served as Director of the Oklahoma Department of Corrections from 1992 to 1996. Prior to that time, Mr. Fields was a warden at both maximum and minimum security correctional facilities in Oklahoma. At present, Mr. Fields is a consultant on issues related to private prisons.

Patrick D. McManus has 37 years of experience in the corrections field. Mr. McManus served as Assistant Commissioner of Corrections for Minnesota from 1974 to 1979, and as Director of Corrections for Kansas from 1979 to 1983. In addition, Mr. McManus has served as a special master or independent court monitor in several prison cases nationwide. Over the past decade, Mr. McManus frequently has been retained as an expert on corrections management matters for the United States Department of Justice.

Margaret Pugh has 32 years of experience in the corrections field. Ms. Pugh served as Commissioner of the Alaska Department of Corrections from 1995 to 2002, and as Southeast Alaska Regional Director of Corrections from 1985 to 1990. Prior to holding those posts, Ms. Pugh was Superintendent of both a maximum security correctional facility and a local jail in Alaska. At present, Ms. Pugh speaks on correctional issues at conferences around the country.

Chase Riveland served as Secretary of Corrections for the state of Washington from 1986 to 1997, Executive Director of the Colorado Department of Corrections from 1983 to 1986, and Deputy Director of the Wisconsin Department of Corrections from 1982 to 1983. At present, Mr. Riveland teaches corrections-related courses at the National Institute of Corrections Academy in Colorado, and serves as an independent corrections consultant.

SUMMARY OF ARGUMENT

This Court has steadfastly maintained that all racial classifications are inherently constitutionally suspect, no matter the setting in which they are employed, and that therefore they must be subjected to strict scrutiny, the most exacting standard of constitutional review. Applying that standard, the Court repeatedly has admonished that racial classifications cannot be predicated solely on generalized assertions that they are necessary to serve some larger social good, but rather, must be rooted in a strong empirical foundation. The CDC policy of racial segregation of inmates in double cells in prison reception centers contravenes this core constitutional tenet. The policy is based entirely on the factually unsubstantiated assumption that racial segregation of those cells is necessary to prevent interracial violence. It is not supported by any evidence showing that racial integration of prison cells leads to greater interracial violence.

In fact, an emerging body of social science scholarship casts great doubt on the validity of the assumption underpinning the CDC's policy of racial segregation. First, a

pioneering study on the impact of the desegregation of the Texas prison system (which, like California's system, is enormous, as well as racially and ethnically diverse), reveals that interracial violence within Texas correctional facilities has declined dramatically as racial integration of inmate cells has increased. Second, the results of a seminal recent survey reveal that the vast majority of wardens at maximum security institutions across the country believe that interracial violence in prisons diminishes with racial integration of cells. The Texas study and the wardens' survey come as no surprise to the *amici*. Based on their extensive experience in the corrections field, *amici* firmly believe that racial integration of cells generally diffuses racial tensions in prisons. Simply put, it is the professional judgment of the *amici* that CDC's rigid and blunderbuss policy of segregating every double cell in every reception center in the California prison system is contrary to sound prison management.

ARGUMENT

I. THE CDC'S POLICY OF RACIAL SEGREGATION OF DOUBLE CELLS IN INMATE RECEPTION CENTERS IS BASED ON AN UNSUBSTANTIATED ASSUMPTION THAT THE POLICY IS WARRANTED TO PREVENT INTERRACIAL VIOLENCE AND THUS CONTRAVENES THE CORE CONSTITUTIONAL TENET THAT RACIAL CLASSIFICATIONS NEVER CAN BE JUSTIFIED ON BALD ASSERTIONS OF NECESSITY.

The CDC classifies prisoners according to race when assigning them to double cells (*i.e.*, cells that house two inmates) in a prison's reception center for the initial 60 days

of incarceration following their arrival at, or transfer between, CDC institutions. Pet. App. 2-3a. While race is ostensibly only one factor in the CDC's double cell placement decisions in reception centers, the CDC has acknowledged that "the chances of an inmate being assigned to a cell mate of another race is pretty close to zero percent." *Id.* at 3a (internal quotations omitted). In short, race is the dispositive factor in assignments to double cells in California's reception centers, and the CDC policy is one of strict racial segregation of those cells.

The asserted purpose of the CDC's policy of racially segregating inmates in reception centers is to prevent racial violence from breaking out. *Id.* at 4a, 14a. This policy is not based, however, on evidence that racial violence was prevalent in reception centers in CDC institutions prior to the adoption of the policy, or that racial violence would be prevalent there today were prisoners of different races assigned to the same cell. Nor is the policy based on evidence that racial violence is prevalent in prison systems where racial integration of cells is the norm. Rather, the policy rests on the CDC's raw assumption that racial violence indisputably would ensue were double cells in reception centers racially mixed.

The sweeping statements of an Associate Warden at one CDC institution underscore the complete lack of evidentiary foundation for the CDC's policy of racial segregation in double cell assignments in reception centers. The Associate Warden baldly declared that, in the absence of the policy, she was "certain that there will be conflicts both in the cells and the conflict will flow into the yards." JA App.L, at 310a. This risk is so great, the Associate Warden proclaimed, that even sub-groups within larger ethnic groups should not be housed together in

prisons: "You can not house a Japanese inmate with a Chinese inmate. You cannot. They will kill each other. They won't even tell you about it. They will just do it." JA App.H, at 189a.

The CDC offered no factual support for the Associate Warden's pronouncements about race. It furnished not one study or iota of statistical proof bearing on the relationship between integrated jail cells and interracial violence in prisons. It did not even come forward with specific episodes, from California or elsewhere, of interracial violence between inmates in racially integrated cells. The CDC simply presumes that inmates of different races cannot exist peacefully together in double cells in reception centers, and invariably will react violently if they are co-mingled there.

Because the Court considers all racial classifications to be inherently constitutionally suspect, *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 227 (1995), it repeatedly has rejected unsubstantiated pronouncements that a racial classification is necessary to serve an asserted larger social good. For example, when evaluating the constitutionality of a municipal program that used racial classifications in the allocation of public contracts as a remedy for purported discrimination against local minority contractors in *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989), the Court refused to accept "highly conclusionary statement[s"] that this discrimination existed. *Id.* at 500. The Court's message was clear: "When [the government] chooses to employ a suspect classification, it cannot rest upon a generalized assertion as to the classification's relevance to its goals. [It] cannot render race a legitimate proxy for a particular condition merely by declaring that the condition exists. The history of racial

classifications in this country suggests that blind judicial deference to legislative or executive pronouncements of necessity has no place in equal protection analysis." *Id.* at 501. In light of these core constitutional tenets, the Court in *Croson* demanded empirical evidence, not mere assertions, of the existence of the discrimination that the race-based contracting program sought to remedy. Because the Court found such evidence missing, it held the program unconstitutional.

Likewise, in *Grutter v. Bollinger*, 539 U.S. 306 (2003), the Court did not reflexively credit the assertions of proponents of race-based university admissions policies designed to foster academic diversity that such policies enhance the quality of the educational environment. Rather, the Court demanded empirical evidence that promoting racial diversity on college campuses actually benefits students. *Id.* at 330.

Naked assertions about the need for racial classifications in the prison setting have fared no better at the Court. In a short per curiam opinion in *Lee v. Washington*, 390 U.S. 333 (1968), the Court affirmed a three-judge district court decision that had flatly rejected Alabama's factually unsupported assertion that racial segregation of inmates was imperative to the maintenance of "security [and] discipline" in the state's penal system. 263 F. Supp. 327, 331 (M.D. Ala. 1966). The Court in *Lee* did not foreclose prison officials from resorting to racial classifications under "particularized circumstances" to quell "racial tensions" that threaten "security and discipline." 390 U.S. at 334 (Black, J., concurring); *see* 263 F. Supp. at 331 ("We recognize that there is merit in the contention that in some isolated instances prison security and discipline necessitates segregation of the races for a limited period.");

see also Croson, 488 U.S. at 521 (Scalia, J., concurring) ("imminent danger to life and limb" posed by a "prison race riot" may justify "temporary segregation of inmates"). By the same token, however, the Court did not give prison officials *carte blanche* to institute racial segregation of inmates based only on vague suppositions that racial integration would cause disorder.[2]

Here, the Ninth Circuit believed it was free to discount this line of precedents, because in its view, *Turner v. Safley*, 482 U.S. 78 (1987), established a special and highly deferential standard of judicial review applicable to all cases in which the actions of prison officials come under constitutional attack, even when those actions involve the use of racial classifications. Pet. App. 12-13a. Applying that lenient standard, the Ninth Circuit did not challenge the assumptions underlying the CDC's policy of racial segregation in double cell assignments in reception centers, and it upheld the policy.

As the Petitioner has forcefully argued, the Ninth Circuit misread *Turner*. Consistent with this Court's refrain that *all* racial classifications, no matter the setting, are inherently suspect, the CDC's policy of racial segregation must be subjected to strict scrutiny, the most exacting standard of constitutional review. In the remainder of this brief, we show that the CDC's assumption that racial

[2] In the decades since *Lee*, many lower courts have rejected unsubstantiated assertions that racial classifications adopted by prison officials were necessary to preserve order. *See, e.g.*, *Stockwell v. Phelps*, 20 F.3d 187, 191 (5th Cir. 1994); *United States v. Wyandotte County*, 480 F.2d 969, 971 (10th Cir. 1973); *White v. Morris*, 811 F. Supp. 341, 344 (S.D. Ohio 1992); *Abbot v. Smaller*, 1990 U.S. Dist. LEXIS 11961 at *8 (E.D. Pa. 1990); *Holt v. Hutto*, 363 F. Supp. 194, 203 (D. Ark. 1973), *rev'd on other grounds*, 505 F.2d 194 (8th Cir. 1974).

integration of double cells in reception centers will breed greater interracial violence conflicts with an emerging body of social science scholarship. *Amici* thus join the Petitioner in urging the Court to reverse the Ninth Circuit's decision and remand the case so that the CDC's policy of racial segregation can be measured against the proper standard, and the recent empirical evidence on the relationship between integrated jail cells and interracial violence can be considered as part of the searching constitutional examination that is required.[3]

[3] Pointing to "numerous instances of racial violence that have caused" the CDC prison at Pelican Bay "to be on lockdown for most of the last couple of years," the Ninth Circuit said the CDC was not "acting on an unsubstantiated record" in adopting its policy of racial segregation of double cells in reception centers. Pet. App. 16-17a n.9. As the Petitioner has observed, however, Pelican Bay is a unique facility that houses extremely violent male convicts, many of whom are members of notorious gangs. Because a racial classification must be narrowly tailored to address the particular problem that prompted recourse to the classification, *see Croson*, 488 U.S. at 506-08, at most, these episodes of violence at Pelican Bay suggest that a targeted approach at Pelican Bay may be warranted. In no way, however, do they support the CDC's blunderbuss dictate that every double cell in every reception center in the California system must be racially segregated. In any event, the episodes of violence at Pelican Bay to which the Ninth Circuit pointed include instances of intraracial conflict, with Hispanics fighting other Hispanics and Asians fighting other Asians. Pet. App. 16-17a n.9. The problems at Pelican Bay, therefore, would appear to transcend race.

II. THE ASSUMPTION UNDERLYING THE CDC'S POLICY OF RACIAL SEGREGATION OF DOUBLE CELLS IN INMATE RECEPTION CENTERS – THAT RACIAL INTEGRATION OF THOSE CELLS WILL BREED GREATER LEVELS OF INTERRACIAL VIOLENCE – IS AT ODDS WITH RECENT EMPIRICAL EVIDENCE AND THE EVOLVING PROFESSIONAL JUDGMENT OF CORRECTIONS OFFICIALS NATIONWIDE.

After this Court's decision in *Lee v. Washington*, formerly segregated prison systems were under a constitutional obligation to desegregate. Until recently, the assumption that racial integration would cause heightened interracial violence in prisons had not been tested rigorously in the academic literature on prison management, even as lower courts enforced the desegregation mandate of *Lee* and integration of formerly segregated prisons took hold.

In the past few years, however, this void has been filled by a pathbreaking study on whether the court-ordered desegregation of the Texas prison system in 1977 has led to an increase in interracial violence. This study, authored by two criminal justice scholars, shows that it has not. Separately, another group of criminal justice scholars has conducted a landmark survey seeking the views of wardens nationwide on the asserted connection between racial integration of cells and interracial violence in prisons. The survey reveals that a vast majority of wardens believe that racially integrated jail cells do not produce increased levels of interracial violence, and, in fact, may well cause interracial violence to decrease. Together, the Texas study and the wardens' survey undermine the assumption on which the CDC's policy of racial segregation of double cells in reception centers is predicated.

A. The Recent Comprehensive Study On The Impact Of The Racial Integration Of The Texas Prison System Casts Great Doubt On The Validity Of The CDC's Assumption That Racial Segregation Of Double Cells In Reception Centers Is Necessary To Prevent Interracial Violence In Prisons.

The authors of the Texas study, Professors Chad Trulson and James Marquart, sought to examine the impact of the 1977 federal court decree requiring the desegregation of the Texas prison system. Chad Trulson & James W. Marquart, *Inmate Racial Integration: Achieving Racial Integration in the Texas Prison System*, 82 Prison Journal 498, 503 (2002). In the *amici's* view, this study represents the most comprehensive scholarly effort to date to determine whether there is a connection between racially integrated jail cells and heightened levels of interracial violence in prisons.

The Texas study is particularly salient here because of the substantial similarities between the California and Texas prison systems. Both systems are enormous: California has the nation's largest state prison system, and Texas the second. *See* Paige M. Harrison & Jennifer Karberg, Bureau of Justice Statistics Bulletin: Prison and Jail Inmates at Midyear 2002 (U.S. Dept. of Justice, April 2003), at 1, *available at* http://www.ojp.usdoj.gov/bjs/pub/pdf/pjim02.pdf. Moreover, there is wide ethnic diversity in the prison population of both states, with African-Americans, Latinos, and Caucasians represented in significant numbers in the California and Texas systems. *Id.* at 13, Table 16. Finally, like the CDC today, which maintains that integration of double cells in reception centers would lead to increased interracial violence, Texas officials

presumed that desegregation of the Texas prison system would lead to increased interracial violence. Indeed, according to Trulson and Marquart, it was this lingering assumption that prompted the Texas Department of Corrections ("TDC") to resist full compliance with the desegregation mandate for more than a decade following the 1977 decree. Chad Trulson & James Marquart, *Racial Desegregation And Violence In the Texas Prison System*, 27 Crim. Justice Rev. 233, 241 (2002).[4]

Over time, the threat of judicially imposed fines compelled the TDC to carry out the court's desegregation mandate. *Id.* By the end of 1991, 30% of the two-person cells in the Texas system were racially mixed. *Id.* By the end of 1999, that figure had risen to 62%. *Id.*

To measure the correlation between racially integrated cells and interracial violence in Texas, Trulson and Marquart collected data concerning inmate-on-inmate assaults that occurred in Texas' maximum security facilities, which house the most violent convicts, from 1990[5] through 1999. This data was culled from Incident Data Forms ("IDFs"), which the TDC itself had designed to support its position that race should be considered in making inmate cell assignments to preserve order. *Id.* at 244. Among other things, the IDFs contained information

[4] The decree established a race-neutral method for assigning inmates to cells. To facilitate desegregation, the decree established numeric goals for the racial and ethnic composition of housing units within Texas prisons. Trulson & Marquart, 82 Prison Journal at 504.

[5] Trulson and Marquart selected 1990 as the start date for their study because, in their view, Texas did not really begin to comply with the desegregation mandate until then.

on whether the reported assault was interracial or intraracial, and whether the incident was between cell mates or between inmates who were housed in different cells. *Id.*

Trulson and Marquart first examined assaults occurring between all inmates, cell mates and non-cell mates alike. During the decade covered by the study, 39,237 inmate-on-inmate assaults were recorded on the IDFs. In each year, intraracial assaults accounted for a larger percentage of the total assaults. *Id.* at 245. For the entire period, the rates of both intraracial and interracial inmate-on-inmate assaults declined dramatically. *Id.* The authors described their findings as follows:

> [T]he overall trend . . . for interracial inmate-on-inmate assaults shows a gradual decline starting in 1993 and continuing rapidly into 1994 with eventual stability around 14 to 16 incidents per 1000 inmates . . . The overall inmate-on-inmate assault rate has declined since the introduction of desegregation – despite a one-year increase in the interracial rate in 1991 (from 35 to 39 per 1,000 inmates interracial and a drop from 48 to 47 intraracial). **Essentially, the data . . . suggest that desegregation did not result in a disproportionate increase in prisoner violence, either interracial or intraracial. That is, the onset and continuation of desegregation did not parallel an increase in racial or nonracial violence. Rather, violence decreased over the decade.**

Id. at 245-46 (emphasis added).

Trulson and Marquart next examined data on assaults between cell mates in both racially mixed and racially homogenous cells. Of the total number of assaults reflected

in the decade-worth of IDFs examined by Trulson and Marquart, 6,549 involved cell mates. Fifty-two percent of these assaults were interracial and forty-eight percent were intraracial. *Id.* at 248-49. After controlling these raw figures to account for population differences,[6] Trulson and Marquart determined that the assault rates in integrated cells were roughly comparable to the rates in non-integrated cells. Indeed, the adjusted figures showed that the rate of intraracial assaults in cells was marginally larger. *Id.* Trulson and Marquart found that the highest rate of interracial assaults involving cell mates took place in 1991-92, during the initial period of integration. *Id.* Overall, however, intraracial assaults involving cell mates occurred at a greater rate than interracial assaults involving cell mates in each year, with the exceptions of 1991, 1992, and 1994. *Id.*

Just as all assaults occurring outside of prisons that involve perpetrators and victims of different races are not necessarily racially motivated, all assaults in racially integrated cells are not necessarily racially motivated either. To account for this basic fact, Trulson and

[6] From 1993 onward, there were more inmates living in integrated double cells than in non-integrated double cells in the subject population, which would lead one to expect that, all else being equal, there would be a greater raw number of assaults between integrated cell mates. To control for this factor, Trulson and Marquart compared the annual *rate* of assaults per one thousand inmates in the integrated and non-integrated populations, in addition to noting the raw numbers. To do this, they started with the raw number of incidents in each population (integrated and non-integrated), divided it by the number of inmates in that population, and multiplied the resulting number by 1,000. Chad Trulson & James W. Marquart, *The Caged Melting Pot: Toward an Understanding of the Consequences of Desegregation in Prisons*, 37 Law & Soc'y Rev. 743, 763-64 (2002).

Marquart sought to distinguish racially motivated interracial assaults involving cell mates from non-racially motivated interracial assaults involving cell mates. Chad Trulson & James W. Marquart, *The Caged Melting Pot: Toward an Understanding of the Consequences of Desegregation in Prisons*, 36 Law & Soc'y Rev. 743, 774 (2002). Again relying on data generated by the TDC during the decade covered by their study, Trulson & Marquart found that only 10% of all interracial assaults in cells were categorized by the TDC as being racially motivated. *Id.* at 768. Moreover, as integration of cells increased over time, the rate of racially motivated attacks in integrated cells decreased. After initially spiking from three assaults per 1,000 inmates to five per 1,000 inmates from 1991 to 1992, the rate of such assaults declined to less than one assault per 1,000 inmates by 1996, and remained at that level through the rest of the period covered by the study. *Id.* The bottom line for Trulson and Marquart is telling: "[V]ery few incidents were found to be racially motivated overall in the entire prison system, even less were among integrated cell partners, and finally, more desegregation did not equal increases in the rate of racially motivated violence over the long term." *Id.*[7]

[7] Trulson and Marquart have suggested that this finding lends credence to "equal status contact theory." This theory hypothesizes that as persons from different racial groups have a high intensity of contact under circumstances in which they are of relatively equal status with each other, any racial prejudice and animosity that they may have harbored beforehand will diminish. *Id.* at 745-46. Trulson and Marquart believe that the equal status contact theory has particular relevance in the prison setting because sharing a prison cell is a paradigm example of intense, forced contact, and in prison, all inmates share the misfortune of incarceration and thus have relatively equal status in that regard. *Id.*

The Texas study is the first of its kind. While additional scholarship on the impact of desegregation of prison systems presumably will be forthcoming, all told, the Texas study would seem to disprove the assumption behind the CDC's policy of racial segregation in double cells in reception centers – that integration of those cells inevitably will lead to greater interracial violence.

B. The CDC's Assumption That Racial Segregation Of Double Cells In Reception Centers Is Necessary To Prevent Interracial Violence In Prisons Is Inconsistent With A Recent Survey On The Experience And Professional Judgment Of Corrections Officials Nationwide.

The Trulson and Marquart study of the impact of desegregation in the Texas prison system is complemented by an important recent survey, conducted by another group of criminal justice scholars. This survey sought to determine whether, with increasing integration of cells over time, there has been a move away from longstanding assumptions held by many prison administrators that racial integration of cells would cause greater interracial violence. The authors of the survey published their results in a seminal article in an esteemed prison management publication. Martha L. Henderson, Francis T. Cullen, Leo Carrol, & William Feinberg, *Race, Rights, and Order in Prison: A National Survey of Wardens on the Racial Integration of Prison Cells*, 80 The Prison Journal 295 (2000).

As the article indicates, the authors disseminated their survey to wardens at maximum security facilities nationwide. The survey asked the wardens some general questions on the characteristics of their prisons and the

existence and/or nature of any formal or informal policies on integrating cells. The survey then turned to some very specific questions about integration. It asked the wardens "to determine whether the integration of prison cells would increase, decrease, or have no effect on the level of violence within an institution." The survey also "asked if racial conflict occurred within their facility as a direct result of integrated celling and to what extent they have had such problems." And the survey asked the wardens "to report, regardless of the policy within their institution, what the most desirable racial policy from the standpoint of safety and security would be." *Id.* at 303.

Ultimately, the authors received 141 useable responses to their survey. *Id.* at 300. Out of those responses, only 30% of the wardens expressed the view that racial integration of cells was likely to increase the level of violence. A whopping 70% expressed the contrary view, stating that racial integration of cells would have no effect or would likely decrease the level of violence. *Id.* at 304. To the question whether there was more violence in integrated cells than in non-integrated cells, only 11.6% of the wardens answered yes. *Id.* And to the question on what housing policy they thought would be most desirable from the standpoint of safety and security, only 1.5% recommended some form of forced racial segregation; 14% percent recommended permitting voluntary segregation; 24.4% recommended assigning inmates on a race-neutral basis without actively promoting racial balance; and the vast majority – 60.3% – recommended robust efforts to integrate. *Id.*

The authors summarized the results of their survey as follows:

> Since the integration of prison cells became an issue in the 1960s, wardens have typically argued that integration would lead to a loss of institutional control. . . . On the contrary, our data suggest that a shift in attitudes has taken place among current wardens. **These wardens state that, in their professional judgment, the racial integration of individual cells would have no effect one way or the other on the level of violence in an institution.** The majority of these wardens also go so far as to assert that there have been no instances of specific racial conflict among inmates occupying integrated cells within their institution. They tend to also agree that conflict is about the same between integrated cells and cells containing inmates of the same race in maximum security facilities.

Id. at 307 (emphasis added).[8]

To be sure, the evidence of the views of corrections officials on the connection between racial integration of cells and interracial violence is not yet fully developed. Based on the wardens' survey, however, it appears that the assumption behind the CDC's policy of racial segregation

[8] The authors of the wardens' survey are not alone in tracing an evolution in correction officials' views on the relationship between racially integrated cells and interracial violence. A few years ago, state and federal corrections officials held a high-profile meeting to examine the causes of, and possible solutions to, prison-bred racial animosity. According to the report of a senior Justice Department official who participated in the meeting, the wide majority of corrections officers who were present expressed the view that racial integration in prisons would not only "improve prison order and safety but also reduce the chance for increased hate attitudes and behaviors." Larry Meachum, *Prisons: Breeding Grounds For Hate?* Corrections Today 132 (December 2000).

of double cells in reception centers is radically out of step with the experience and views of senior corrections officials elsewhere.[9]

The *amici* wholeheartedly share those views. Based on their extensive experience in the corrections field, *amici* firmly believe that there is no connection between racial integration of cells and heightened levels of interracial violence. If anything, in the *amici's* estimation, racial integration of cells tends to diffuse racial tensions and thus diminish interracial violence. Accordingly, in the professional judgment of the *amici*, a blanket policy of racial segregation of inmates is contrary to sound prison management.

Amici recognize that complete race-neutrality in cell assignments in reception centers may not be practical where there is a particularized racial problem at a corrections facility, and that therefore race may have to be taken into account in some instances to preserve order. However, we are aware of no state other than California that assumes that every incoming prisoner is incapable of getting

[9] Although beyond the scope of this *amicus* brief, we note that because the empirical evidence shows that racial integration of cells tends to dispel, not breed, racial prejudice and animosity, integration also serves the larger institutional goal of rehabilitation of prisoners, *see Greenholtz v. Nebraska Penal Inmates*, 442 U.S. 1, 14 (1979), by better equipping inmates to live peacefully in the racially diverse world to which they return upon release from prison. As one scholar has succinctly put it: "The vast majority of prisoners are released back into society and the manner in which inmates are treated in prison influences their post-prison experience. Corrections officials must take the lead in breaking the vicious cycle of hatred and intolerance. . . . If rehabilitation is a meaningful component of the prison experience, then teaching tolerance and racial equality is an important activity." Craig Hemmens, *No Shades of Grey: The Legal Implications of Voluntary Racial Segregation in Prison*, 4 Corrections Management Quarterly 26-27 (2000).

along with a cell mate of a different race. And we are aware of no state other than California that has acted on such an assumption by adopting an inflexible and absolute policy of racial segregation of double cells in reception centers.[10]

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[10] The Oklahoma Department of Corrections policy on inmate housing assignments in reception centers provides a stark contrast to the CDC policy. Oklahoma was under a court order to desegregate its prisons. *See Battle v. Anderson*, 788 F.2d 1421, 1425 (10th Cir. 1986). The state's policy on inmate housing in reception centers is in keeping with that desegregation mandate. The policy provides that while "newly received inmates are not generally assigned randomly to racially integrated cells[,] these inmates are not precluded from integrated cell assignments." *See* http://www.doc.state.ok.us/Offtech/op030102.htm. Corrections officials in Oklahoma make cell assignments in reception centers based on many factors, including information indicating that the inmate is affiliated with a gang; however, even gang affiliation does not preclude an integrated housing assignment. *Id.* To the extent that race is considered in the assignment calculus in Oklahoma, it appears to be one factor among many, and as a result, individualized consideration is given to all inmates. Such use of racial criteria bears the hallmarks of flexibility that the Court has said are essential for a racial classification to withstand scrutiny. *See Grutter*, 539 U.S. at 337.

CONCLUSION

For the foregoing reasons, this Court should reverse the decision of the court of appeals and remand.

Respectfully submitted,

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